



MEDIOBANCA
Banca di Credito Finanziario S.p.A.

Milan, 11 November 2011
CL.020/11

To

Office of the United States Trustee for Region 2

33 Whitehall Street, 21st Floor, New York
New York 10004

Attn: Tracy Hope Davis, Esq., Elisabetta Gasparini, Esq. And Andrea Schwartz, Esq.

With copy to

Honorable James M. Peck

One Bowling Green, New York
New York 10004, Courtroom 601

Weil Gotshal & Manges LLP

767 Fifth Avenue, New York
New York 10153
Attn: Jacqueline Marcus, Esq.

Milbank, Tweed, Hadley & McCloy LLP

1 Chase Manhattan Plaza, New York
New York 10005
Attn: Dennis F. Dunne, Esq., Dennis O'Donnell, Esq., and Evan Fleck, Esq.

Re: Objection to Notice of Proposed Assumption of executory contracts and unexpired leases pursuant to Debtors' Third Amended Joint Chapter 11 Plan pursuant to Section 1121 of the Bankruptcy Code - SECOND DELIVERY

Dear Sir, Madam,

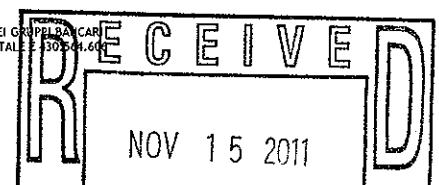
Reference is made to your communication dated 27 October 2011.

We hereby inform you that the delivery of the attached letter, dated 8 November 2011, has not been accomplished within 10 November, as requested by You, due to a miscarriage by the courier Fedex Express.

Fedex undertook to delivery four original letters, addressed to You and to each of the entities copied hereto, by yesterday 10 November. Three letters were delivered to the relevant addressee, whilst we were informed by Fedex Express that the letter addressed to You was lost.

We are therefore re-sending the following documents:

1. Copy of the signed letter dated 8 November 2011, sent to Your attention;
2. A new original letter, dated 8 November 2011;





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3. The following communications from Fedex Express: (i) copy of Fedex Express' proof of posting relating to the fourth letters; (ii) a print of Fedex Express' internet page showing that three letters, but not Your letter (letter No. 898537053896), were delivered to the relevant addresses (please make reference to the code number assigned to each letter under the proof of posting documentation to identify the relevant letters); and (iii) a communication from Fedex Express confirming that Your letter was delivered by us to Fedex Express in time to be delivered by yesterday 10 November.

Moreover, please note that, in order to avoid any further inconvenience, we are sending to Your attention two original copies of this letter, via two independent carriers. For sake of clarity, two originals of this letter shall be sent only to You, while only one single copy will be sent to the other parties copied hereto.

In light of the above explanations, we trust that our objection to the Notice of Proposed Assumption was timely served and is generally in order.

Best regards,

Mediobanca
Banca di Credito Finanziario S.p.A.

A handwritten signature in black ink, appearing to be "A. S. S.", written over a horizontal line.

Authorized Signature



MEDIOBANCA
Banca di Credito Finanziario S.p.A.

Annex 1

Signed letter dated 8 November 2011

*Banca di Credito Finanziario S.p.A.*

Milan, 8 November 2011
CL.020/11

To:

Honorable James M. Peck

One Bowling Green, New York
New York 10004, Courtroom 601

Weil Gotshal & Manges LLP

767 Fifth Avenue, New York
New York 10153
Attn: Jacqueline Marcus, Esq.

Office of the United States Trustee for Region 2

33 Whitehall Street, 21st Floor, New York
New York 10004

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Attn: Tracy Hope Davis, Esq., Elisabetta Gasparini, Esq. And Andrea Schwartz, Esq.

Milbank, Tweed, Hadley & McCloy LLP

1 Chase Manhattan Plaza, New York
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Attn: Dennis F. Dunne, Esq., Dennis O'Donnell, Esq., and Evan Fleck, Esq.

Re: Objection to Notice of Proposed Assumption of executory contracts and unexpired leases pursuant to Debtors' Third Amended Joint Chapter 11 Plan pursuant to Section 1121 of the Bankruptcy Code

Please see enclosed Mediobanca S.p.A. objection to Notice of Proposed Assumption of executory contracts and unexpired leases pursuant to Debtors' Third Amended Joint Chapter 11 Plan pursuant to Section 1121 of the Bankruptcy Code.

Regards,

Mediobanca

Banca di Credito Finanziario S.p.A.

Legal Counsel



Banca di Credito Finanziario S.p.A.

Milan, 8 November 2011

CL.020/11

To: Honorable James M. Peck
One Bowling Green, New York
New York 10004, Courtroom 601

To: Weil Gotshal & Manges LLP
767 Fifth Avenue, New York
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Attn: Jacqueline Marcus, Esq.

To: Office of the United States Trustee for Region 2
33 Whitehall Street, 21st Floor, New York
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Attn: Tracy Hope Davis, Esq., Elisabetta Gasparini, Esq. And Andrea Schwartz, Esq.

To: Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza, New York
New York 10005
Attn: Dennis F. Dunne, Esq., Dennis O'Donnell, Esq., and Evan Fleck, Esq.

Dear Sirs,

Re: Objection to Notice of Proposed Assumption of executory contracts and unexpired leases pursuant to Debtors' Third Amended Joint Chapter 11 Plan pursuant to Section 1121 of the Bankruptcy Code,

We make reference to the 1992 ISDA Master Agreement (Multicurrency – Cross Border) dated 6 November 2000 (the "**Agreement**"), as as supplemented by the Schedule thereto and by a Credit Support Annex dated as of 6 November 2000 which forms part of the Agreement, entered into by and between Mediobanca – Banca di Credito Finanziario S.p.A. and Lehman Brothers Special Financing Inc. ("**LBSF**"). Capitalized terms not defined in this letter shall have the same meaning ascribed to them in the Agreement.

Reference is also made to your communication dated 27 October 2011 whereby you notified us that you intend to assume the Agreement, to the extent not already expired by its own terms.

In this regards, we would like to bring to your attention that the Agreement has indeed expired by its own terms as a consequence of the termination notice dated 17 September 2008 and sent by us to LBSF whereby we exercised our right to terminate all the transactions entered into with LBSF under the Agreement in accordance with Section 6 of the Agreement and designated 18 September 2008 as early termination date of all the transactions entered into under the Agreement (the "**Early Termination Date**").

h

Accordingly, we maintain that the Agreement is not capable of being assumed by you, contrary to what your communication may suggest. We note that Lehman itself, either directly or through LAMCO Services Ltd, has confirmed in many occasions that it also deems the Agreement to have been early terminated, so much so that we are currently engaged in discussions around the determination of the termination value of the Agreement. We cannot see how Lehman could have possibly engaged in such discussions, had it not accepted that the Agreement had been terminated.

In the light of the above, we hereby **OBJECT** to assumption of the Agreement on the basis that it has already expired on the Early Termination Date and as such it is not capable of being assumed by you.

Nothing in this notice shall be deemed to constitute a waiver of any rights, claims and remedies that we may have at law, in equity, under the Agreement or any other agreement between you and us, or otherwise, nor shall it be construed as an admission of any fact in respect of the subject matter of this letter.

Yours Sincerely,

	Mediobanca Banca di Credito Finanziario S.p.A.
	
_____ Legal Counsel	_____ Authorized signature



MEDIOBANCA
Banca di Credito Italiano SpA

Annex 2

New original signed objection letter



Banca di Credito Finanziario S.p.A.

Milan, 8 November 2011

CL.020/11

To: Honorable James M. Peck
One Bowling Green, New York
New York 10004, Courtroom 601

To: Weil Gotshal & Manges LLP
767 Fifth Avenue, New York
New York 10153
Attn: Jacqueline Marcus, Esq.

To: Office of the United States Trustee for Region 2
33 Whitehall Street, 21st Floor, New York
New York 10004
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MEDIOBANCA
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Yours Sincerely,

Mediobanca
Banca di Credito Finanziario S.p.A.

A handwritten signature in black ink, appearing to be "Al. Neri", written over a horizontal line.

Authorized signature

A handwritten signature in black ink, appearing to be "A. Della", written over a horizontal line.

Authorized signature



MEDIOBANCA
Banca di Credito Italiano SpA

Annex 3

Communications/Prints from Fedex Express

FedEx International Air Waybill

Express For shipments originating in Europe, the Middle East, Africa, and the Indian Subcontinent.

1 From (Please print and print last) Date <u>09/14/11</u> Sender's FedEx Account Number <u>1677-4214-9</u>	
Sender's Name <u>A. L. Roto</u> Phone <u>002 952-4061</u>	
Company <u>MEDIOBANCA</u>	
Address <u>P. TIA ENRICO CUCCIA 1</u>	
City <u>MILANO</u> State <u>MI</u>	
Country <u>IT</u> Postal Code <u>20121</u>	
Sender's VAT/URN Number REQUIRED for the European Shipments	
2 To Recipient's Name <u>Gasparrini/Schwartz</u> Phone Company <u>Office at the United States Trustee for Region 2</u>	
Address <u>33 WHITEHALL STREET 21st Floor</u> District	
Address	
City <u>NEW YORK</u> State <u>NY</u>	
Country <u>U.S.A.</u> ZIP <u>10004</u>	
Recipient's Tax ID Number for Customs Purposes	
3 Shipment Information Total Packages <u>1</u> Total Weight <u>0.075</u> kg DIM <u>1</u> / <u>1</u> / <u>1</u> cm Sender's Reference Description of Contents Declared Value for Customs Hazardous Materials Country of Origin Value for Customs Required Total Declared Value for Customs (Specify Currency)	

4 Express Package Service <input type="checkbox"/> FedEx Intl. Priority <input type="checkbox"/> FedEx Intl. Economy <input type="checkbox"/> FedEx Intl. First NEW FedEx Express First Monday thru Friday delivery between select European locations. Select the option	
5 Packaging <input type="checkbox"/> FedEx Envelope <input checked="" type="checkbox"/> FedEx Pak <input type="checkbox"/> FedEx Box <input type="checkbox"/> FedEx Tube <input type="checkbox"/> Other For FedEx Pak Priority and FedEx Express Priority Select the option	
6 Special Handling <input type="checkbox"/> HOLD at FedEx Location <input type="checkbox"/> SATURDAY Delivery Available for FedEx Intl. Priority only Select the option	
7a Payment Bill transportation charges for: <input checked="" type="checkbox"/> Sender's Acct. No. in Section 1 <input type="checkbox"/> Recipient's Acct. No. in Section 2 <input type="checkbox"/> Third Party <input type="checkbox"/> Cash <input type="checkbox"/> Check FedEx Insurance Grand Total Due	
7b Payment Bill duties and taxes for: All shipments may be subject to Customs charges, which FedEx does not estimate prior to clearance. <input type="checkbox"/> Sender's Acct. No. in Section 1 <input type="checkbox"/> Recipient's Acct. No. in Section 2 <input type="checkbox"/> Third Party FedEx Insurance Grand Total Due	
8 Your Internal Billing Reference 11-7101-11	
9 Required Signature By signing this document, the Shipper agrees to the conditions of carriage required on the back of this Air Waybill. Sender's Signature: <u>[Signature]</u> Signature: <u>[Signature]</u> This is not authorization to ship this shipment without a required signature.	
For a full and complete set of conditions of carriage, please go to our Web site at fedex.com .	
Tracking Number: <u>8985 3705 3896</u> 0406	
Origin: <u>MI</u> Destination: <u>NY</u> Handling: <u>540</u>	
Ship Date: <u>09/14/11</u> Ship Time: <u>15:30</u> Ship Weight: <u>0.075</u> kg	
Shipper's Reference: <u>319</u>	
Non-Negotiable International Air Waybill - FedEx	

Manifest
Billing Copy

Not all services and options are available to all destinations. Dangerous goods cannot be shipped using this Air Waybill.

Express For shipments originating in Europe, the Middle East, Africa, and the Indian Subcontinent

001

FedEx Tracking Number

0985 3705 3885

Farm ID No.

0-736

**Manifest
Billing Copy**

Not all services and options are available to all destinations. Dangerous goods cannot be shipped using this Air Waybill.

11/50



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In Progress

<u>Tracking no.</u>	<u>Status</u>	<u>Estimated delivery</u>	<u>Destination</u>
898537053896	In transit 		NEW YORK, NY

Delivered

<u>Tracking no.</u>	<u>Status</u>	<u>Delivery date</u>	<u>Destination</u>	<u>Signature Proof Image?</u> <input checked="" type="checkbox"/>
898537053900	Delivered 	Nov 10, 2011 9:32 AM	NEW YORK, NY	Yes <input checked="" type="checkbox"/>
898537053885	Delivered 	Nov 10, 2011 9:28 AM	NUEVA YORK, NY	Yes <input checked="" type="checkbox"/>
898537053874	Delivered 	Nov 10, 2011 8:57 AM	NEW YORK, NY	Yes <input checked="" type="checkbox"/>

- ☐ View/print Signature Proof of Delivery letter
☐ E-mail Signature Proof of Delivery letter

Account no.

(Required for [detailed](#) Signature Proof of Delivery)

Click [here](#) if you have more than one account number for these shipments.

[Submit](#)

Federal Express Europe, Inc.
Filiale Italiana
Praxis Business Park
Strada Padana Superiore, 2/B
20063 Cernusco sul Naviglio (MI)

Tel. (02) 2188.1
Fax (02) 2188.7900
Servizio Clienti
199.151.119 (0,10 € / min, IVA inclusa)
fedex.com/it

C.C.I.A.A. Milano n. 1335437
303802 Reg. Soc. Trib. Milano
Cod. Fisc. & P. IVA 09963400156



Cernusco S/N, Nov, 11th 2011

To
MEDIOBANCA SPA
P.tta Enrico Cuccia, 1
20121 Milano

Attn. Ms Francesca Boriani

Subject: Your shipment dated nov, 9th sent under AWB 898537053896

Dear Ms Boriani,

with reference to the above mentioned shipment we regret to inform you that it is not located at the moment.

We activated all the necessary procedures to locate the shipment as soon as possible and the research is still ongoing; we will keep you informed as soon as we have new information.

In the meantime we already instruct our billing office to credit back to you the transportation charges due.

We confirm that this shipment, addressed to

**Office of The United states Trustee for Region 2, 33 Whitehall Street 21ST
Floor – 10004 New York USA**

was picked up on November 9th from your offices located in Piazzetta Cuccia 1 in Milan at 12.07pm.

The commitment for the delivery of this shipment was November 10th by 8am in New York.

We sincerely apologize for any inconvenience this situation could have caused and we remain at your disposal in case any further clarification should be needed.

Best regards,

Remo Michelazzo

Sales Solutions & Support Representative EMEA
FedEx Express Europe, Middle East, Indian Subcontinent & Africa

Tel: +39.02.21887459
Fax: +39.02.21888460